

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9005 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHOBHANABEN W/O CHANDRAKANT UTTAMBHAI CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR VH PATEL for MR RC KODEKAR for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 14th September, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are prejudicial to the maintenance of public order. Three offences punishable under the Bombay Prohibition Act have been registered against the petitioner during the year 1998 and are pending investigation. In each of the said offences, sizeable amount of foreign liquor was recovered from the petitioner and in first of the said offences, some quantity of country liquor was also recovered from the possession of the petitioner. Besides, two individuals have given statements in respect of the bootlegging activities of the petitioner and its adverse effect on public order.

The impugned order of detention has been challenged on the grounds (a) the activities of the petitioner can not be said to be prejudicial to the maintenance of public order; and (b) the Detaining Authority has relied upon the statements of the witnesses without verifying the genuineness of the same. The subjective satisfaction is, therefore, vitiated.

It is apparent that for recording his subjective satisfaction in respect of the petitioner's activities being prejudicial to the maintenance of public order, the Detaining Authority has relied upon the statements given by the witnesses. The said witnesses were also summoned before the Detaining Authority and the Detaining Authority has verified the correctness of the fear of retaliation expressed by the witnesses. The Detaining Authority, however, has not recorded his satisfaction in respect of the credibility of the witnesses and the genuineness of the statements given by them. In the matter of MOHAMAD SARIF @ KALIO NURMOHAMADSAMIBAPU SHAIKH VS COMMISSIONER OF POLICE, AHMEDABAD (1997 {1} GLH, 1017), this court, while considering a similar contention, has observed that " The question which requires consideration in the facts of the present case is as to whether the Detaining Authority had applied had applied its mind to the statements of these witnesses with regard to the incident while forming an opinion so as to warrant the detention.....mere reproduction of such statements in the body of the order can not be said to be sufficient so as to show the active application of mind by the Detaining Authority at the time of passing of the order, more particularly, when there is no contemporaneous evidence taken note of and considered by

the Detaining Authority.....The Detaining Authority has to apply its mind and such application of mind must be made manifest in the body of the order itself and in any case when it is alleged that the order had been passed without application of mind, it must be shown before the court by way of filing the affidavit or otherwise on the basis of some contemporaneous evidence and the reasons which can be said to be germane so as to warrant the detention ". As observed hereinabove, active application of mind by the Detaining Authority in respect of the contents of the statements given by the witnesses is not manifest from the grounds of detention, nor is shown to be based on some contemporaneous evidence. The subjective satisfaction recorded by the Detaining Authority, therefore, is vitiated. Hence, the order of detention would be bad and illegal.

The petition is allowed. The order dated 14th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI *